IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL NO 1472 of 2004
in
SPECIAL CIVIL APPLICATION NO 3786 of 2003
with
CIVIL APPLICATION NO 5825 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JANAKBA ABHESHINH ZALA, WIDOW AND HEIRS OF A.V. ZALA
Versus
STATE OF GUJARAT

Appearance:
1. LETTERS PATENT APPEAL No. 1472 of 2004 & CA 5825/04
BALKRISHNA ACHARYA for Appellant No.
MR HD DAVE, A.G.P. for Respondent No. 1
..... for Respondent No. 2-3

CORAM : HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE SHARAD D.DAVE

Date of decision: 07/12/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE B.J.SHETHNA)

1. The Appellant is a widow of deceased Abhesing Jhala, Police Constable, removed from service, on the ground of repeated absent, applied for compassionate pension on the death of her husband. However, the respondent - Authority turned down her request for compassionate pension. Aggrieved of the said order the petitioner approached this Court by way of Special Civil Application No.3786 of 2003, which was dismissed by Ms.R.M.Doshit,J. on 11.11.2003. Hence, this Appeal.

2. Shri Acharya, learned Counsel for the Appellant submitted that the appellant is a poor widow and seriously ill. When she had applied for compassionate pension on the death of her husband, who had put on about 18 years of service as Police Constable with the respondent, then the respondent - Authority ought to have sanctioned compassionate family pension to her. Relying on Rule : 186(a) of the Bombay Civil Service Rules, 1959 (for short "B.C.S.R."), Shri Acharya submitted that the respondent - Authority ought to have sanctioned compassionate pension to the appellant - petitioner. He also submitted that the learned Single Judge committed serious error in dismissing the writ petition on the ground that her deceased husband was not entitled for such compassionate pension as he was removed from service, therefore, the petitioner, being widow of deceased Abhesing Jhala, would not be entitled for any compassionate family pension.

3. In support of his aforesaid submission Shri Acharya has strongly relied on Rule : 186 (a) of BCSR, which is as under :

> "A Government servant who is removed or required to retire from Government service for misconduct or insolvency shall be granted no pension other than a compassionate pension."

Plain reading of Rule : 186(a) of BCSR would go to show that a Government servant who is removed or required to be retired from Government service for misconduct would not be entitled for any pension. However, Shri Acharya stressed on the words in Rule : 186(a) - "other than a compassionate pension". According to his submission the deceased husband of the appellant petitioner may not be entitled for any pension but, at least, he would have been entitled for a compassionate pension even though he was removed from service on the

ground of alleged misconduct, found to be proved against him during the Departmental Enquiry. However, Shri Acharya has simply over-looked the provision of Rule : 186(b) which shows that the Government servant who is removed or required to retire from Government service on the ground of inefficiency be granted compassionate pension if he was eligible for superannuation or retiring pension. Thus, conjoin reading of Rule : 186(a) & (b) makes it clear that a Government servant who is dismissed from service for committing serious misconduct would not be entitled for any pension, including compassionate pension. In the instant case, deceased Abhesing Jhala, husband of the appellant - petitioner, was serving as Police Constable. He was removed from service on the ground of remaining absent from duty. On earlier occasion also he was removed from service for this very misconduct but later on he was reinstated in service. But, he had not improved and again he remained absent from duty, therefore, once again he was removed from duty. Under the circumstances, we are of the clear opinion that her deceased husband was not entitled for any pension or compassionate pension. If her deceased husband was not entitled for any pension or compassionate pension with the removal from service on such a serious charges, then his widow would not be entitled for any compassionate pension. It is also wrong to submit that the Appellant-petitioner has right to claim compassionate pension. The very meaning of word "compassionate pension" means that a person has to first makes his or her case for such compassionate pension and if the Authority satisfies then only it can be given to a person otherwise not and no one can claim, as a matter of right, compassionate pension.

4. At this stage, learned counsel Shri Acharya tried to rely on two Circular, issued by the State Government for giving compassionate pension. The same were not placed on record of the writ petition by the appellant petitioner before the learned Single Judge, therefore, the learned Single Judge had no opportunity to consider the same. Therefore, in our considered opinion such circular cannot be considered by this Court at this belated stage. Even assuming for the sake of argument that as per those Circulars the appellant - petitioner was entitled for compassionate pension then also we would not have allowed the Appeal as the Rule for compassionate pension is absolutely clear. On facts of this case when the deceased husband of the Appellant - petitioner was not entitled for compassionate pension then there is no question of his widow claim compassionate pension.

5. In view of the above discussion, this Appeal fails and is hereby summarily dismissed.

Civil Application No.5825 of 2004 is dismissed as the main Appeal is dismissed. Rule discharged. No order as to costs.

(B.J.Shethna, J.)

Date : December 07, 2004

(Sharad D.Dave, J.)

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